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Ben Gamble

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How Did College Basketball Land in Federal Court and Where Does it Go From Here?

By Ben Gamble*

Ruling

On Wednesday, October 24, 2018, a New York federal court jury found James Gatto, Merl Code, and Christian Dawkins guilty of wire fraud and conspiracy to commit wire fraud.¹ Gatto, an Adidas executive, Code, a former Adidas employee, and Dawkins, a sports agency recruiter, arranged cash payments to the families of highly ranked college basketball recruits in exchange for commitments to Adidas-sponsored schools and future endorsement deals with Adidas once they began playing basketball professionally.² According to prosecutors, the victims were the universities where these elite basketball prospects enrolled, specifically the University of Louisville, University of Kansas, and North Carolina State University.³ How might a university receiving a commitment from a top basketball prospect, steered by the payments of executives of apparel brands that sponsor these schools, be a victim? The defendant defrauded because the universities granted full-ride scholarships and financial aid to these recruits under false pretenses.⁴ Namely, scholarships were awarded to these recruits under the misguided belief that they were eligible to participate on their respective schools' basketball teams.⁵ After accepting these payments, they were ineligible under NCAA rules.⁶ Thus, the universities lost control of its ability to award scholarships and financial aid, and the defendants put the universities at risk of violating NCAA rules by "knowingly facilitating the enrollment of paid-off student athletes."⁷

* J.D. Candidate, 2020, Saint Louis University School of Law

¹ Mark Schlabach, *James Gatto, Merl Code and Christian Dawkins Found Guilty in Pay-for-Play Trial*, ESPN (Oct. 25, 2018), http://www.espn.com/mens-college-basketball/story/_/id/25072946/james-gatto-merl-code-christian-dawkins-found-guilty-college-basketball-pay-play-trial.

² *Id.*

³ Michael McCann, *Why the Prosecution Won in the College Hoops Corruption Trial and What's Next*, Sports Illustrated, (Oct. 24, 2018), <https://www.si.com/college-basketball/2018/10/24/ncaa-corruption-fbi-trial-verdict-analysis>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

How did college basketball recruiting end up in federal court?

A year ago, the FBI and attorneys from the Southern District of New York presented their findings from a two-year investigation into alleged corruption in college basketball recruiting.⁸ The revelations of these findings, Adidas employees funneling money to families of elite basketball prospects, were not surprising to those familiar with the recruiting process.⁹ What was surprising was the federal government's involvement in corruption in college basketball.¹⁰ According to some, the investigative findings and the resulting convictions from these findings were inevitable.¹¹ A black market was created for these elite basketball programs the moment "big money" entered college athletics.¹² Take, for example, the sponsorship and licensing agreements two of the "victim" universities have with Adidas. In 2017, the University of Louisville signed a ten-year sponsorship deal with Adidas worth over \$160 million.¹³ Last September, the University of Kansas announced a twelve-year extension of their sponsorship deal with Adidas worth approximately \$191 million.¹⁴ Despite the enormous sums of money going directly to these schools, their athletic departments, and their coaches, college basketball players remain unable to receive any compensation due to NCAA amateurism rules.¹⁵ As a result, these athletes are tempted to receive their fair market value through the black market exposed at trial.¹⁶ Securing commitments from prized recruits often leads to winning, which may create bigger contracts for the coaches and bigger endorsement deals from apparel companies. Commentators allege that

⁸ Sean Gregory, *How the College Basketball Corruption Verdict Could Help End Amateurism*, Time (Oct. 25, 2018), <http://time.com/5433913/college-basketball-verdict-amateurism/>.

⁹ Reid Forgrave, *Don't be Shocked College Hoops is Dirty, be Surprised it Took so Long to be Exposed*, CBS Sports, (Sep. 26, 2017), <https://www.cbssports.com/college-basketball/news/dont-be-shocked-college-hoops-is-dirty-be-surprised-it-took-so-long-to-get-exposed/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Jeff Greer, *Louisville has new \$160M Deal with Adidas, Tom Jurich Tells Boosters*, Courier Journal, (Aug. 24, 2017), <https://www.courier-journal.com/story/sports/college/louisville/2017/08/24/louisville-new-160-million-deal-adidas-tom-jurich-tells-boosters/600363001/>.

¹⁴ Jesse Newell, *KU Athletics Renderings Show Major Changes to Football Stadium as Part of \$350M Plan*, The Kansas City Star, (Sep. 22, 2017), <https://www.kansascity.com/sports/college/big-12/university-of-kansas/article174926821.html>.

¹⁵ Forgrave, *supra* note 9.

¹⁶ Forgrave, *supra* note 9.

coaches cheat because they want to win.¹⁷ Where college basketball goes from here remains a mystery.

Future Implications

With guilty verdicts entered against all defendants and prison sentences likely to follow, the question remains whether the NCAA will punish the schools involved.¹⁸ In a recent commission led by Condoleezza Rice, the NCAA approved reforms that include a bylaw allowing the NCAA to use the information disclosed at trial to punish the complicit universities.¹⁹ Further, the federal government recently gave the NCAA permission to begin their own investigations into possible NCAA violations, using information disclosed at trial, by the schools named in the trial.²⁰ To illustrate, T.J. Gassola, a former Adidas executive, testified to payments made to the families of former Kansas basketball commit Billy Preston and current Kansas basketball player Silvio De Sousa.²¹ De Sousa is not currently playing for the team, pending a review of his eligibility.²² Critics question whether the NCAA will follow through with these possible sanctions because of the potential for lost revenue.²³ Regardless, the precedent set by the convictions of those involved in the trial is likely to deter future wrongdoers from engaging in the practice of paying recruits to enroll at a certain school.²⁴ The fact that apparel executives and college coaches now know they are on the radar of federal investigators with the possibility of serving a prison sentence if caught will likely limit this

¹⁷ Forgrave, *supra* note 9.

¹⁸ Jeremy Bauer-Wolf, *The Guilty Verdicts in the Men's Basketball Corruption Trial Will Rattle the NCAA, Athletic Experts Say*, Inside Higher Ed, (Oct. 26, 2018), <https://www.insidehighered.com/news/2018/10/26/guilty-verdict-college-basketball-corruption-trial-puts-new-pressure-ncaa>.

¹⁹ *Id.*

²⁰ Pat Forde, Pete Thamel, and Dan Wetzel, *Feds Give NCAA Go-Ahead to Begin Investigating Schools in College Hoops Scandal*, Yahoo! Sports, (Nov. 6, 2018), <https://sports.yahoo.com/feds-give-ncaa-go-ahead-begin-investigating-certain-schools-tied-college-hoops-scandal-030502043.html>.

²¹ Gregory, *supra* note 8; Preston never played for Kansas. While awaiting the NCAA to clear his amateur status, Preston signed a professional basketball contract in Bosnia, exhausting his eligibility to compete in the NCAA. Pete Grathoff, *KU Fans Unload on NCAA After Billy Preston Leaves for Bosnian Team*, The Kansas City Star, (Jan. 20, 2018), <https://www.kansascity.com/sports/spt-columns-blogs/for-petes-sake/article195749664.html>.

²² Gregory, *supra* note 8.

²³ Bauer-Wolf, *supra* note 18.

²⁴ McCann, *supra* note 3.

practice in college basketball recruiting.²⁵ Similarly, parents and the recruits are less likely to accept these bribes after seeing this trial play out.²⁶

Recently, the NBA's G-League announced that it would offer an alternative path to college for elite basketball prospects that are not eligible for the NBA draft.²⁷ Under the NBA's current rules, to be draft eligible, you must be out of high school for one year or 19 years of age during the calendar year of the draft.²⁸ The NBA G-League, labeled "the NBA's official minor league", will offer contracts worth up to \$125,000 to elite basketball prospects who are 18 but not yet eligible for the NBA draft.²⁹ This route provides basketball prospects the ability to immediately receive compensation for their basketball skills, hire agents, and profit off of their likeness, all prohibited by NCAA rules.³⁰ On the other side, the exposure of college basketball is much larger than that of the G-League.³¹ College basketball, and specifically the NCAA tournament, attracts millions of viewers, increasing the draft stock and future endorsement opportunities of these prospects.³² Further, once these prospects sign professional basketball contracts, they exhaust their eligibility to participate in college athletics.³³ Some coaches, such as University of Kentucky's John Calipari, point to this aspect as reason for concern when considering this alternative route.³⁴ Calipari's concern stems from the prospects that bypass college basketball, but ultimately fail in reaching the NBA.³⁵ What is their Plan B if they don't

²⁵ McCann, *supra* note 3.

²⁶ McCann, *supra* note 3.

²⁷ Jonathan Givony, *G League to Offer \$125K to Elite Prospect as Alternative to College One-and-Done Route*, ESPN, (Oct. 24, 2018), http://www.espn.com/nba/story/_/id/25015812/g-league-offer-professional-path-elite-prospects-not-wanting-go-one-done-route-ncaa.

²⁸ Michael McCann, *Will New G League Contracts for Elite Prospect See Players Leave College Basketball Behind?*, Sports Illustrated, (Oct. 18, 2018), <https://www.si.com/nba/2018/10/18/new-select-contracts-g-league-prospects-abandon-college-basketball-ncaa>.

²⁹ *What You Need to Know About the NBA G League*, NBA G League, <https://gleague.nba.com/about/>. (last visited Oct. 31, 2018).

³⁰ McCann, *supra* note 27.

³¹ Scott Gleeson, *NBA G League Will Offer \$125K to Top High School Prospect Who Don't Want to go to College*, USA Today, (Oct. 18, 2018), <https://www.usatoday.com/story/sports/nba/2018/10/18/g-league-offer-125-k-elite-players-who-dont-want-college-path/1682932002/>.

³² *Id.*

³³ *Id.*

³⁴ Cassandra Negley, *John Calipari Voices Concern for Players who Choose G League Over College*, Yahoo Sports, (Oct. 22, 2018), <https://sports.yahoo.com/john-calipari-voices-concern-players-choose-g-league-college-153233428.html>.

³⁵ *Id.*

reach the NBA after bypassing college basketball?³⁶ Finally, which prospects are considered “elite basketball prospects” eligible for this alternate route? This question is yet to be answered and is one of the criticisms of the G-League.³⁷ One commentator suggests this route is likely available only to those prospects that would remain in college for a single year, in order to meet draft eligibility requirements, before entering the NBA Draft.³⁸ Players should undoubtedly have the option to pursue a route that results in compensation for their basketball abilities but bypassing the exposure of big-time college basketball is likely not a viable option for a large majority of prospects, most of which fall outside the range of elite prospects.

Edited by Carter Gage

³⁶ *Id.*

³⁷ Ricky O'Donnell, *The 4 Biggest Problems with the NBA's New Plan to Pay Elite High School Players*, SB Nation, (Oct. 18, 2018), <https://www.sbnation.com/nba/2018/10/18/17995466/g-league-high-school-players-pay-raise-nba-draft-one-and-done-age-limit>.

³⁸ Givony, *supra* note 26.